

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

EDWARD BECKETT,

Plaintiff

v.

Civil No. 98-93-P-C

MAINE MEDICAL CENTER,

Defendant

GENE CARTER, District Judge

**MEMORANDUM OF DECISION DENYING
DEFENDANT'S MOTION FOR IMPOSITION OF SANCTIONS**

Before the Court for action at this time is Defendant Maine Medical Center's (MMC) Motion for Sanctions with Incorporated Memorandum of Law (Docket No. 26). The motion has been fully briefed, and an evidentiary hearing held thereon at the *sua sponte* requirement of the Court. *See* Order Denying Defendant's Motion for Sanctions (Docket No. 34). After full reconsideration of the original written submissions on the motion, the evidence adduced at hearing, and the post-hearing arguments of counsel, the Court concludes that it will deny the motion.

Federal Rule of Civil Procedure 11, under which the motion is brought, requires that an attorney make reasonable inquiry to assure that all pleadings, motions, and papers filed with the

Court are factually well-grounded, legally tenable, and not interposed for any improper purpose. *Mariani v. Doctors Associates, Inc.*, 983 F.2d 5, 7 (1st Cir. 1993).¹ Counsel’s conduct is to be judged in this inquiry by standards of due diligence and objective reasonableness. *Maine Audubon Soc’y v. Purslow*, 907 F.2d 265, 268 (1st Cir. 1990). The Court is to “examine all the circumstances, including the complexity of the subject matter, the party’s familiarity with it, the time available for inquiry, and the ease (or difficulty) of access to the requisite information.” *Navarro-Ayala v. Nunez*, 968 F.2d 1421, 1425 (1st Cir. 1992). The test is not one of perfect research or utter prescience. *Id.* The adequacy of a party’s pleading is to be tested “on the basis of what was reasonable when the pleading was filed rather than in hindsight.” *Id.*

¹Fed. R. Civ. P. 11 reads in pertinent part as follows:

Rule 11. Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions

. . . .

(b) **Representations to Court.** By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, –

- (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Here, Defendant's attack is launched on two predicates: (1) the allegations set forth by Plaintiff's counsel, Mr. Waxman, in Plaintiff's Complaints herein;² and (2) counsel's persistence in advocating the challenged allegations of the Complaints until he ultimately voluntarily dismissed the case after he had concluded that he could not produce evidence of medical causation on Count III. The specific thrust of MMC's attack is to counsel's basis, by the foregoing standards of due diligence and objective reasonableness, for making the allegations set

²The Court's docket shows that the original Complaint (Docket No. 1) was filed on April 1, 1998, and that it set forth two separate counts: Count I, asserting a claim against the EMTs, Chipman and Cady, pursuant to 42 U.S.C. § 1983, for depriving Ruth Ann Beckett "of her substantive due process rights in bodily integrity and/or adequate medical care . . .," and Count II, asserting a claim against MMC for violation of Portland Code §§ 13.5-21 *et seq.* (a local antidiscrimination ordinance), alleging that MMC violated the provisions because it "directly or indirectly refused, withheld, or denied Ruth Ann Beckett -- on account of her sexual orientation -- the services that would otherwise have been furnished by Maine Medical Center." Complaint ¶¶ 60, 64 at 7.

On April 10, 1998, an Amended Complaint (Docket No. 2) was filed. That pleading adopts the structure and all of the substance of the prior Complaint. Count I, by its title, asserts only the § 1983 claim against the EMTs, as did the original Complaint. The *ad damnum* thereto seeks no judgment against MMC. The factual allegations asserted to be common to both counts have been supplemented, however, by the allegation of additional paragraphs 56-59, alleging culpable action of MMC. These assert the factual abandonment of Ruth Ann Beckett on admission to the hospital in violation of MMC's applicable protocol and that "[t]he actions or inaction of Defendant Maine Medical Center killed Ruth Ann Beckett." Amended Complaint ¶ 59 at 7. Count II of the Amended Complaint reads precisely the same (with the exception of changed numbering of its paragraphs) as Count II of the original Complaint. It, therefore, sets forth the claim of violation of the Portland antidiscrimination ordinance against Defendant MMC. Count III is added by the Amended Complaint and asserts against MMC a new claim for violation of the Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. § 1395dd. In paragraphs 70-77, it sets forth the factual allegations of Ruth Ann Beckett's abandonment on admission and asserts that the lack of care resulted in her death after conscious suffering, physical pain, and emotional trauma, and that the lack of care constituted malicious behavior. It seeks recovery of damages for those injuries as alleged. Thus, after the Amended Complaint was filed, Plaintiff asserted the § 1983 claim against the EMTs and the antidiscrimination (Count II) and the EMTALA (Count III) claims against MMC.

On June 25, 1998, Plaintiff filed a Motion to Dismiss All Counts Against All Parties (Docket No. 18). On July 1, 1998, Plaintiff filed a Stipulation of Dismissal (Docket No. 19) of Count I against the EMTs. Defendant MMC filed a Motion for Summary Judgment on each of Count II (Docket No. 16) and Count III (Docket No. 23) against it. Plaintiff's response to the latter motion was to concede that "summary judgment on Count III should enter because it [*sic*] cannot produce expert testimony to establish causation and damages." Plaintiff's Response (Docket No. 25).

A Recommended Decision of Magistrate Judge Cohen (Docket No. 30) recommended that Plaintiff's Motion to Dismiss All Counts (Docket No. 18) be granted and that Defendant's pending motion with respect to Counts II and III be dismissed as moot. That Recommended Decision was adopted and affirmed by this Court's order of September 10, 1998 (Docket No. 33), which granted Plaintiff's Motion to Dismiss All Counts of the Amended Complaint and noted that Defendant's motions were rendered moot.

out in paragraphs 25, 32, 48, 49, 55, and 64 of the original Complaint and those allegations as reiterated with the additional ones made in paragraphs 59 and 72-77 of the Amended Complaint.³

³Since all the allegations pertinent to this inquiry set out in the original Complaint were realleged in the Amended Complaint, they are quoted here from the latter document with those significant allegations added to them in the Amended Complaint. They read as follows:

- 25. Upon entering Ruth Ann Beckett's apartment, Defendants Chipman and Cady became immediately aware that Ruth Ann was a lesbian.
- 32. Defendant Chipman and/or Defendant Cady informed the triage nurse that Ruth Ann Beckett was a lesbian who had probably had a spat with her lover and got drunk, that it was a "bullshit call," or words to that effect.
- 48. Defendants Chipman and Cady knew or should have known that their statements to the triage nurse regarding Ruth Ann Beckett during a very busy time at MMC ER would be relied upon.
- 49. The triage nurse at MMC ER did in fact rely upon the statements of Defendants Chipman and/or Cady in making treatment decisions.
- 55. The actions of Defendants Chipman and/or Cady killed Ruth Ann Beckett.
- 59. The actions or inaction of Defendant Maine Medical Center killed Ruth Ann Beckett.
- 68. As the foregoing paragraphs indicate, Maine Medical Center directly or indirectly refused, withheld, or denied Ruth Ann Beckett -- on account of her sexual orientation -- the services that would otherwise have been furnished by Maine Medical Center. *See* Portland Code § 13.5-27.
- 72. Ms. Beckett arrived at the Maine Medical Center emergency Room on March 30, 1997 seeking treatment.
- 73. Maine Medical Center did not afford Ms. Beckett an appropriate screening in order to determine if she had an emergency medical condition.
- 74. Had Maine Medical Center merely noted Ms. Beckett's presenting symptoms of (1) sudden onset of severe headache, (2) high blood pressure and (3) vomiting, any reasonably well-trained emergency medical provider would have suspected a brain aneurism and averted [*sic*] provided appropriate care.
- 75. As a direct result of Maine Medical Center's failure to afford Ms. Beckett an appropriate screening, Ms. Beckett died.
- 76. As a direct result of Maine Medical Center's failure to afford Ms. Beckett an appropriate screening, Ms. Beckett suffered physical pain and emotional trauma while conscious before she died.

(continued...)

A detailed recital of the historical facts giving rise to the case is not warranted here. The Court has carefully studied the circumstances of the case as reflected by the pleadings section of the Court's file and the evidence adduced at the hearing, including the testimony of Plaintiff's counsel, Mr. Waxman, and his investigator, Mr. Smaha. The resolution of the issues generated by the motion center on the question of whether, when the subject pleadings were filed, Mr. Waxman had a reasonably objective basis, arrived at through due diligence inquiry, for making the following critical allegations in these pleadings: (1) that the EMTs, Chipman and Cady, "became immediately aware [upon entering Ruth Ann Beckett's apartment] that Ruth Ann was a lesbian," Amended Complaint ¶ 25; (2) that the EMTs informed the triage nurse at Maine Medical Center, on Ruth Ann Beckett's admission to that facility, that she "was a lesbian who had probably had a spat with her lover and got drunk, that it was a 'bullshit call' or words to that effect," *id.* ¶ 32; (3) that the EMTs "knew or should have known that their statements to the triage nurse regarding Ruth Ann Beckett . . . would be relied upon," *id.* ¶ 48; (4) that the triage nurse at MMC did, in fact, rely upon the alleged statements of the EMTs, *id.* ¶ 49; (5) that the actions of the EMTs "killed Ruth Ann Beckett," *id.* ¶ 55; (6) that the conduct of MMC "killed Ruth Ann Beckett," *id.* ¶ 59; (7) that MMC "directly or indirectly refused, withheld, or denied Ruth Ann Beckett – on account of her sexual orientation – the services that would otherwise have been furnished by Maine Medical Center," *id.* ¶ 68 and Complaint ¶ 64; and (8) that MMC's

³(...continued)

77. Maine Medical Center's failure or refusal to afford Ms. Beckett an appropriate screening constitutes malicious and/or impliedly malicious behavior.

alleged conduct constituting the EMTALA violation was malicious or impliedly so, Amended Complaint ¶ 77.⁴

The record shows that Mr. Waxman had the benefit, in drafting the subject pleadings, of conversations with his client, the Plaintiff, Ruth Ann Beckett's executor and brother, Edward Beckett; two memoranda showing the initial work-up of the case by prestigious Boston and Portland law firms in whose competency in the field of the case he had no reason to lack confidence; the facts disclosed by an extensive and detailed investigation of the case by a licensed, experienced investigator, Mr. Smaha, on whose skill and competence Mr. Waxman had reasonable basis to rely; and his own skill, training, and experience as an attorney. He also knew that Plaintiff's previous law firm,⁵ Drummond and Woodsum, had filed notices of claims of civil rights violation and medical malpractice.

The linchpin facts that support the bringing of Count Two of the original Complaint and Counts Two and Three of the Amended Complaint are the following: (1) that the EMTs knew and told the triage nurse, Cherrie Moreno, of Ruth Ann Beckett's sexual orientation; (2) that Ruth Ann Beckett did not receive proper medical care upon admission to Maine Medical Center; and (3) that MMC's failure to provide due care occurred "on account of" her sexual orientation. Whether Ms. Moreno was told or knew of Ruth Ann Beckett's sexual orientation is the most critical fact. This is because Ms. Moreno's knowledge of Ruth Ann Beckett's sexual orientation serves to trigger the factual inference that the alleged breach of the admission protocol

⁴The Amended Complaint re-alleged the allegations set out in ¶¶ 1-55 of the original Complaint. These made up items (1)-(5) and (7) in the text above.

⁵Mr. Waxman testified that this law firm had initially undertaken Plaintiff's case but had to withdraw because of a conflict of interest arising from its representation of other clients.

requirements (the abandonment on admission) was due to a discriminatory animus. A careful examination of the evidence reflects that Mr. Waxman could reasonably conclude from the facts known to him from Mr. Smaha's investigation and the medical records which Mr. Smaha obtained that Ruth Ann Beckett received substandard medical care on admission. Indeed, the facts support the inference that she was abandoned for over an hour after admission before she was examined and attended to by hospital personnel, all in violation of its applicable protocol. He had like factual basis in the facts related to him by his client, Mr. Beckett, and his investigator, Mr. Smaha, to believe that the EMTs would know of Ruth Ann Beckett's sexual orientation from observations of the contents of her apartment. Likewise, Mr. Waxman had reasonable basis to believe, despite some contradictions in the available evidence at that time, that the EMTs told Ms. Moreno, the triage nurse, the sexual orientation of Ruth Ann Beckett and the other information alleged in the Complaints about the nature of the emergency call. The reasonable basis for this is to be found in the evidence, developed by Mr. Smaha and supported by the initial statements of an anonymous informant who came ultimately to be identified as Allison Whittaker. This evidence included the fact that EMT Chipman commented to a training class of EMTs shortly after the events in question and, in his description of the foregoing events, referred to the deceased as a lesbian.

The Court finds Mr. Smaha's explanation, as he related it to Mr. Waxman, of the development of his investigation, and the body of evidence afforded thereby, to be highly credible and persuasive of the viability of the factual conclusion that Ms. Moreno was told by the EMTs of Ruth Ann Beckett's sexual orientation. Mr. Waxman was guilty of no lack of diligence

or reasonableness in treating Mr. Smaha's findings as an adequate basis to proceed with the suit by the allegations made in the two Complaints.

The Court is satisfied and finds that the results of the investigation of the facts by Mr. Smaha, their consideration by Mr. Waxman (in the light of what he knew from the investigations and actions of the other law firms involved in working up the case), and objectively proper standards and processes of inference and deduction, justified Mr. Waxman in believing, when the pleadings were filed, that a reasonable and persuasive basis existed to contend that Ms. Moreno knew from the EMTs of Ruth Ann Beckett's sexual orientation and that the inference of discriminatory animus was a tenable one.⁶ At that time, his information from Allison Whittaker was fully supportive of that conclusion.⁷

All things considered, the Court is fully satisfied and finds that Mr. Waxman had pursued with due diligence his fact-finding inquiry into the basis for the asserted claims against MMC set forth in the subject pleadings and that he properly concluded, by an objectively justifiable process

⁶The Court finds it to be, at the very least, curious that, with the critical issue being whether Ms. Moreno knew of Ruth Ann Beckett's sexual orientation at the time of her admission, she sat in the courtroom throughout the evidentiary hearing and was never called by Defendant MMC as a witness to testify to what she knew in that respect, MMC having the burden of proof on the motion. Such a circumstance would warrant the Court in drawing an inference that her testimony, if given, would have been adverse to MMC on that point. *Palmer v. Nissen*, 256 F. Supp. 497, 505 (D. Me. 1966) (Gignoux, D.J.); *Fisher v. Scafati*, 314 F. Supp. 929, 937 (D. Mass. 1969) (Garritty, D.J.); *see also NLRB v. Wilson Freight Co.*, 604 F.2d 712, 728 (1st Cir. 1979); *Simcox v. San Juan Shipyard, Inc.*, 754 F.2d 430, 444 (1st Cir. 1985). The Court has not found it necessary, however, on this record to indulge in the drawing of such an inference in reaching its conclusions on the point.

⁷Ms. Whittaker did not, even later, do a full *volt-face* until the time of her deposition with respect to her knowledge of the facts supporting a discriminatory animus. In her telephone conversation with Mr. Waxman before that, and after the pleadings were filed, she indicated not a retraction of her initial claim of abandonment and discrimination, but a changing strategic view, from her perspective, of the preferable way to posture the lawsuit. That circumstance was not enough to unman Mr. Waxman in his conviction that the abandonment arose out of a discriminatory animus. Even later, when she disavowed at the deposition personal knowledge of facts showing discrimination, Mr. Waxman could objectively view that disavowal in the context of the total congeries of fact then known to him as insufficient to effectively undermine the conclusion that the discriminatory animus existed and caused Ruth Ann Beckett's abandonment.

of reason, that the predicate facts for those claims were substantially correct, likely to be capable of proof, and legally tenable; in short, that the claims were warranted by existing law and that the essential allegations and contentions of fact had evidentiary support. *See* Fed. R. Civ. P. 11(b)(2) and (3). The Court **FINDS** that, at no time, even today, has there been a solid evidentiary basis put forth in this record that would require responsible counsel to categorically reject for lack of reliability the possible factual conclusions that EMT Chipman told Ms. Moreno of Ruth Ann Beckett's sexual orientation and that her abandonment on admission to MMC was precipitated by a resulting discriminatory animus. The Court also **FINDS** that Mr. Waxman did not unreasonably or irresponsibly pursue the claims once he found that he could not prove medical causation on Count III of the Amended Complaint and that he used due diligence in making that determination.

The motion is hereby **DENIED**.

So **ORDERED**.

GENE CARTER
District Judge

Dated at Portland, Maine this 25th day of January, 1999.